Customs of Galati Port at the Beginning of the 20th Century

Constantin Tănase[1]

Abstract: Common practices, whether recognized or not as a source of law, represented an area of great importance in economic practice and judicial bodies, especially in maritime and river transport, but also rail and air transport. The Civil Code of 1864 made some references to local custom, while the new Civil Code provisions establish that practices are sources of law. In this way was settled a particularly sensitive area, namely, the existence and applicability of common practices in special matters such as those on business, commercial transactions, financial and otherwise, being directly related to maritime and river transport. This study attempts to identify specific features of the common practices application in Galaţi port in the early twentieth century.

Keywords: applicable commercial practices; Galaţi port; coutume

1. Introduction

Until the Civil Code in 2009 (Law no. 287/2009 enforced by Law 71/ 2011 on October 11, 2011) the customs did not represent a sources of law and were not mentioned in the contents of the Civil code in 1864 or the Commercial code in 1887 regarding the spruces of civil law and commercial law (Cărpenaru, 2000, p. 16; Ionascu, 1967, p. 53 and following).

Nevertheless, some legal provisions made reference to the *local customs* as a rule of conduct anchored by the social practice. To this end we can present as examples the dispositions of articles 600, 607, 610 paragraph 3, 970 paragraph 2, 980, 981, 1450 and 1451 in the Civil Code, 1864. Therefore, article 600 provisioned that the height of the surroundings between two properties in the city and suburbs will be determined according to special norms or the local customs and article 607 provisioned that planting trees will be made at a distance from the fences decided after special norms or constant customs. In the same conditions, regarding distance, a construction could be erected near a common wall or not (article 610, paragraph 3, Civil Code). According to article 970, paragraph 2 in the Civil code 1864, the conventions oblige not only for what is expressly contained by them but also to the consequences, namely what equity, custom or law given to the obligation,

[1] Senior Lecturer, PhD, Faculty of Law, "Danubius" University of Galati, Romania. Address: 3 Galati Blvd, Galati, Romania, Tel.: +40372 361 102, fax: +40372 361 290. Corresponding author: constantin.tanase@univ-danubius.ro.

according to its nature. In the same line, the arguable dispositions were interpreted according to the local customs of the place of conclusion of the contract its normal clauses are inherent even if they are not expressly mentioned in the contract (article 980-981 Civil Code 1864).

Finally, the rental of furniture destined for an entire house, apartment or store was considered to be made for the ordinary period for renting houses, apartments or stores, according to the local customs and if there was no circumstances proving that the rental was made for one year, one month or one day, it was considered to be made according to the local customs, as mentioned in articles 1450 and 1451, paragraph 2, Civil code 1864.

The doctrine has issued opinions according to which these customs (in fact practices) are of interpretative character because they facilitate the application of legal provisions in a certain case (Carpenaru, S., 2000, p. 17). Some authors have asserted that the customs the law makes specific reference to, such as article 970, paragraph 2, Civil code 1864 have judicial norm value, are subordinated to the legal norms therefore are normative customs (Popescu, T.R., 1976, p. 61). Still, they cannot be interpreted as being sources of law, distinct from those norms (Pop, A., Beleiu, Gh., 1974, p. 105). They sustain that other customs than the ones the law refers to have the role to complete and specify the content of the judicial act and can be inserted in the contract as clauses and have been named *commercial customs.*

Regarding the latter, some authors have formulated the opinion according to which the commercial customs, not being normative sources of law can have a subsidiary application and only in the cases provisioned by law (Georgescu, 1946, p. 132; Turcu, 1992, p. 11). The opinion was grounded on the dispositions of article 1 of the Commercial code in 1887 which expressly regulated the sources of the commercial law (among which the customs were not mentioned) and the sources of the Civil code in 1864 (which interpreted the customs and practices as mentioned before).

The first paragraph of article 1 of the current Civil Code lists the sources of civil law as being three, namely: the law, the customs and general principles of law. The drafting f the new code seems to us as being trenchant, precise and able to limit the theoretical discussions and solutions that can be decided in practice. Therefore, the code mentions that *in the cases that are not foreseen by the law customs are applied, and in lack thereof, the legal dispositions regarding similar situations are applied and where there are no such dispositions, the general principles of law are applied.* As observed, the content of the law offers also *a preferential order* regarding the application of a certain source of law, order which is underlined by the fact that *in matters of regulation by law, the customs are applied only in cases in which the law expressly makes reference to them.*

Only the customs according to the public law and good practice are recognised as being sources of law and the interested party has to prove their existence and content. The customs published in selections elaborated by entities or organs authorised in this field are presumed to exist, until proven different.

In the final paragraph of the first article, paragraph 6 of the current Civil Code, the customs are defined as being *the practices and professional customs.* The practice is a rule of conduct established during social life over a long period of time and respected in virtue of habitude, as mandatory norm (Collective coordinated by Ionascu, 1967, p. 71). The professional customs are uniform practices applied in the exertion of professions, works, long term activities which have been attributed the specification of mandatory norms.

2. General Aspects Regarding the Port Customs

By analysing the port customs, some authors consider that they have to be differentiated from the maritime customs, the first having a scope limited to the port area (Voicu, 2002, p. 521). Although they appeared and were consolidated as unwritten rules, accepted by the participants to the port activities, in time the customs have been organised and published for general knowledge, then regulated by professional authorities and finally, by state authorities. This final aspect has determined some authors to discuss whether in this case we can talk about port customs or we are facing legal dispositions (Voicu, 2002, p. 51).

Some customs are specific only to a certain port or more than one port and other times, to a larger area. Usually they are related to activities such as loading, unloading goods, manipulation of the goods, preparing the merchandise and the vessels for loading- unloading.

In order for them to be recognised as being valid, the port customs have to fulfil the following conditions:

- be well defined and applied uniformly in order to allow a secure and precise interpretation of the relations between partners and also in such a manner that they can be used in all situations;
- be equitable in order o be accepted as valid and recognised by the litigation institutions;
- be in accordance with the principles of law and norms established by the institutions belonging to the public local administration.
- generally, the port customs refer to:
- legal local holidays which, according to the custom, are mandatory for all the vessels;
- way of entering the port and accosting at the operation berths;

- way of calculating the loading days and the loading- unloading norms for the vessels;
- official office hours and labour hours in the port;
- number of shifts of the teams of workers;
- duration of the working day;
- obligation to use winch handlers and pontoon handlers;
- interpretation of contractual clauses or commercial terms;
- rules for taking over the goods;
- rules for bunkering the vessels;
- application of the port taxes- sometimes depending on the nature of the certificate of dead weight of the vessel.

The main difference between the judicial norms and the port customs is that the former appear as a consequence of the activity of a legislative organism, therefore intermittent from chronologic point of view, while the customs are born by constant practice (Voicu, 2002, p. 521). More precisely they come from individuals of groups of individuals who use them systematically, in organised and uniform manner for a long period of time, recognising their mandatory character in lack of a specific normative act.

3. Customs Of Galati Port At The Beginning Of The 20th Century

3.1. General Aspects Regarding Galati Port

Located in the eastern part of Romania, on the lower Danube, 80 Mm[1] from the Black Sea, Galati port has been for a long time the closest maritime Danube port of the historic province Moldova and is one of the most important ports of Romania.

The first documentary reference of the city Galati and the port dated back to 1445 in a document signed by the waivode Stefan II. The history of the settlement was extremely troubled over long period of time because of the confluence of interests among great powers (empires) in the area, the importance of the port for Romanians increasing also after losing Chilia borough and Cetatea Alba borough to Ottomans, Hungarians and Russians.

Because of the intense commercial activity in Galati port, in 1775 Russia established the first consulate, followed by France and Great Britain, who opened consulates in 1805.

In 1837 the port was declared free (porto- franco) which ensured a significant development and an increase in strategic importance. As a consequence, after the war on Crimeea in 1854-1856, it has been, together with Sulina, the head quarter of European Commission of Danube.

[1] Mm – marine mile; 1 Mm = 1852 m.

The intense commercial activity, dominated by the massive export of grain is attested, among others, by the consul of France who, on April 8, 1870, noted: "*...Galati port has become the general entrepreneur of grain which Moldova exports on the Danube and Black Sea in Great Britain, France and Italy*".

Although on December 22, 1882 the statute of free port is no longer valid, the grain trade continues to develop at the beginning of the 20th century adding also the export of wood. The increase on the importance of the port has attracted the interest of the European countries which opened diplomatic representations in Galati during 1900-1914, namely 16 foreign consulates. But this position obtained on the strategic maps has also brought some disadvantages. During the Second World War, the port and city were bombed by the soviet, American and German aviation and finally, the retreating German army dynamited the most important edifices considered to be objectives of military interest.

After the war, the port has a significant development favoured by the industrialization of the surrounding areas but also by the interest generated by resources such as wood and others. Currently, the port is structured on fur sections: fluvial station, docks, wood dock and mineral port.

3.2. Customs From The Beginning Of The 20th Century

At the beginning of the 20th century, grain was the main merchandise loaded in Galati port. This activity has a long tradition proved by the customs after which it was carried. Each sequence of grain manipulation in the port (quantity, quality, weighing, conclusion of business, price settling etc) was done according to rules which, by permanent and uniform usage, have received normative character.

For their organization was drafted the Regulation of Customs in Galati Port, approved by Decision no. 3268 in May 8, 1915 by the Ministry of Commerce (Tonegaru,1934, pp. 231-222).

The Regulation was applied to all the operations concluded within Galati Stock and also outside of it by the members of the corporation (stock), by the official intermediaries, replacements or associates. Any litigation or claim related to the operations concluded according to the regulation was judged at the Court of Arbitration and Reconciliation of Galati Stock.

Five months before the first international initiative for the codification of the commercial terms[1] the regulation defined a series of "used expressions", of which we mention:

[1] In 1920, the International Chamber of commerce in Paris had the initiative to codify the commercial terms in order to eliminate the discrepancies caused by their diversity, deferent from one country to

- *delivered from the wagon, barge, storage or docks*- the goods were delivered at the wagon, barge, storage or docks, the expenses being in the responsibility of the buyer, except for half the expenses for weighing or measurement which were handled by the seller;
- *delivered in the wagon, barge, storage or docks*- the expenses for placing the goods in the wagon, barge, storage or docks were the responsibility of the seller;
- *tale quale*- the buyer was obliged to receive the goods in its state at the moment;
- *seen and liked*- the buyer is aware of the quality and condition of the goods;
- *truck on road*- the goods was already delivered to the railway;
- *floating vessel*- the goods were loaded on the vessel, and left the loading point.

Regarding the *quantity*, the regulation had a series of norms that could also be used in the present. When the quantity was established using the expression *approximately*, the seller had the right to deliver the goods with 5% tolerance, plus or minus. The term *wagon* represented a load of 10.000 kg. If a business was concluded for a fixed quantity, the buyer couldn't be forced to receive nothing else but that quantity, for any difference in quantity the buyer had the right to receive compensation at the price of the delivery day.

Quality was stipulated in contracts and registers sing the expressions: *type, goods according to the proof, seen and liked, middle harvest, tale quale, good conditions.* According to the customs, the buyer couldn't refuse the receipt of goods of higher quality than the one he bought if the seller considered it to be of the sae type, the latter not having the right to any compensation in these situations. On the other hand, the buyer could refuse the receipt of the goods, claiming compensations when the difference in quality exceeded 5% (negative). The clause of quality *goods according to proof* involved taking a sample at the moment of concluding the contract (business) which was sealed and given to the Galati Stock for storage. If two samples were delivered, one for each party, the buyer had the right to refuse the goods which were not corresponding, in quality, entirely or in part. The misunderstandings regarding the quality for the clauses *type* and *goods according to proof* were settled at the Chamber of Arbitration and Reconciliation of Galati Stock, which established the quantum of differences and damages.

Other customs organised by the regulation referred to the *foreign bodies, natural weight, layout and probing* of grain in wagons, barges or other types of vessels.

another, from one port to another. The first codification wasn't made until 1936 under the short term INCOTERMS (International commercial terms).

Also interesting are the customs regarding the *conclusion of business, price settling and payment.*

Any business was considered to be concluded, validly, by using the simple verbal formula "*sta bene".* The intermediary of the business drafted a register or a minute, but the content of it was only a transcription of those agreed upon by the parties and settled with the expression *"sta bene".*

The price of the grain and seeds was established per hectolitre o hundred of kilogram and the payment was done by the buyer to the seller "for quantity and in relation to the quantity that was received daily in anticipation" (paragraph 57 in the Regulation – Tonegaru, 1934, p. 222). The payment was done in cash or cheque with a known bank and accepted by the seller. The payments stipulated by clause such as: *upon receipt, warranty, bill of lading etc,* had to be made in the day in which these payment instruments (or credit titles) were presented to the buyer.

Very few businesses were concluded directly between the partners. Most of them were perfected by intermediaries. They performed an activity of courting, namely getting the partners of the business in indirect connection. The regulation of the customs gave the right attention to these activities, revealing the practice according to which the courting was due to the intermediary after the conclusion of every business. The payment for the courting was made upon the presentation of the expense account. A business was considered to be liquidated, from the perspective of the intermediary, when the contract was fulfilled entirely or in part, or even if it was void.

4. Conclusions

At the beginning of the 20th century, Galati port was a very strong pint of the Romanian economy. A big part of the trace operations going through it, especially export, performed by Romanian entrepreneurs. The explanation is fund in its geographical positions but also in the vocation of the surrounding areas to deliver the main merchandise supplied to Europe and other territories of the world- grain, containing gluten of high quality.

All the activities performed in this strategic pint had to follow a certain order, had to be performed according to a certain arrangement, this necessity being ensured by the *customs, habits and practise* consecrated also by their long application. Galati port is one of the places where such norms or conduct have been anchored, subsequently codified at international level, by the INCOTERMS rules.

5. References

Cărpenaru, S. (2000). *Romanian commercial law,* 3rd Edition. Bucharest: All Beck.

Cosmovici, P. (coord.) (1989). *Treaty of civil law, vol. I, General part.* Bucharest*:* Academy Publishing House.

Georgescu, I. L. (1946). *Romanian commercial law*. Bucharest: Socec Publishing House.

Ionascu, T. (coord.) (1967). *Treaty of civil law, vol. I, General part.* Bucharest*:* Academy Publishing House.

Pop, A. & Beleiu, Gh. (1974). *Course of civil law*. *General part.* Centre of Multiplication of Bucharest University.

Popescu, T.R. (1976). *Commercial International Law, Treaty.* Bucharest: Didactică si Pedagogică.

Tonegaru, C.C. (1934). *Maritime and fluvial code.* Bucharest: „Lupta" Printer.

Turcu, I. (1992). *Business law.* Iasi: "Chemarea" Foundation Publishing House.

Voicu, M. (2002). *Maritime law institutions.* Ex Ponto Publishing House.